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page]*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**NATURAL RESOURCES DEFENSE
COUNCIL, INC.; SIERRA CLUB;
CONSUMER FEDERATION OF
AMERICA; and TEXAS RATEPAYERS'
ORGANIZATION TO SAVE ENERGY,**

Plaintiffs,

v.

**RICK PERRY, in his official capacity as
Secretary of the United States Department
of Energy; and the UNITED STATES
DEPARTMENT OF ENERGY,**

Defendants,

and

**AIR CONDITIONING, HEATING, AND
REFRIGERATION INSTITUTE,**

Defendant-Intervenor.

Lead Case

Case No. 17-cv-03404-VC

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER EXTENDING
BRIEFING DEADLINES ON STATE
PLAINTIFFS' RENEWED MOTION
FOR ATTORNEYS' FEES**

Judge: Hon. Vince Chhabria
Action Filed: June 13, 2017
Hearing: November 19, 2020

**THE PEOPLE OF THE STATE OF
CALIFORNIA, BY AND THROUGH
ATTORNEY GENERAL XAVIER
BECERRA, THE CALIFORNIA
ENERGY COMMISSION, STATE OF
NEW YORK, STATE OF
CONNECTICUT, STATE OF ILLINOIS,
STATE OF MAINE, STATE OF
MARYLAND, COMMONWEALTH OF
MASSACHUSETTS, STATE OF
MINNESOTA, BY AND THROUGH ITS
MINNESOTA DEPARTMENT OF
COMMERCE AND MINNESOTA
POLLUTION CONTROL AGENCY,
STATE OF OREGON,
COMMONWEALTH OF
PENNSYLVANIA, STATE OF
VERMONT, STATE OF WASHINGTON,
THE DISTRICT OF COLUMBIA and
CITY OF NEW YORK,**

Plaintiffs,

v.

**JAMES R. PERRY, AS SECRETARY OF
UNITED STATES DEPARTMENT OF
ENERGY, and THE UNITED STATES
DEPARTMENT OF ENERGY,**

Defendants,

and

**AIR CONDITIONING, HEATING, AND
REFRIGERATION INSTITUTE,**

Defendant-Intervenor.

Consolidated with

Case No. 17-cv-03406-VC

Pursuant to Civil Local Rule 6-2 and 7-12, the State Plaintiff movants and Defendants respectfully submit this stipulated request that the Court extend the time for the Defendants to file a response to State Plaintiffs' renewed motion under Federal Rule of Civil Procedure 54(d) for fees in this matter by 28 days from Thursday, September 24, 2020, to Thursday, October 22, 2020, and extend the State Plaintiffs' deadline to file a reply by an equivalent amount to Monday, October 29, 2020. The requested time will allow for ongoing negotiations of an agreed-upon resolution of the fees and costs incurred by State Plaintiffs in this case.

PROCEDURAL BACKGROUND

While the parties have not previously requested an extension of time for the briefing of State Plaintiffs' renewed motion and the requested extension would not necessitate an extension of the November 19, 2020, hearing date that has been reserved, there are other extensions that were previously granted by the Court in this matter. Decl. of Somerset Perry, ¶ 5.

Federal Rule of Civil Procedure 54(d)(2)(B)(i) provides that a motion for attorneys' fees must be filed no later than 14 days after the entry of judgment in a case. On February 15, 2018, the Court entered judgment for the Plaintiffs in this matter, meaning a motion for attorney fees would have been due March 1, 2018. The Court subsequently granted the Parties' joint stipulated request to extend the deadline to April 30, 2018. ECF No. 83, 84. After the Defendants filed their notice of appeal (ECF No. 85), the Court again granted the Parties' joint stipulated request to extend the fee motion deadline to sixty days after the conclusion of the Defendants' appeal. ECF No. 102, 103. Following its ruling in favor of the Plaintiffs, and the expiration of the Defendants' period to file an appeal, the Ninth Circuit issued its mandate on December 2, 2019. This Court subsequently granted two stipulations, which extended the deadline for Plaintiffs' motion for attorneys' fees to March 16, 2020, and then May 15, 2020. ECF Nos. 109, 110, 112, 113. Pursuant to those extensions, State Plaintiffs filed their initial motion for attorneys' fees on May 15, 2020. ECF No. 117. Following that filing, the Parties agreed to an extension of the Defendants' deadline to file their opposition, which the Court granted. ECF No. 119, 120. After vacating the hearing, the Court denied the State Plaintiffs' fee motion without prejudice on August 20, 2020. ECF Nos. 138, 139. The State Plaintiffs filed a renewed motion on September 10, 2020. ECF No. 140.

State Plaintiffs' renewed motion, filed on September 10, 2020, substantially revised the amount that State Plaintiffs are seeking in attorneys' fees. Decl. of Somerset Perry, ¶ 3. Based on this revision, State Plaintiffs and the Defendants have embarked on negotiations towards a possible settlement, and have exchanged offers the week of September 14. *Id.* While progress has been made, additional time is needed for negotiations between the Parties if a resolution of the State Plaintiffs' renewed fee motion is to be reached. *Id.* at ¶ 4. Under the current schedule,

1 however, Defendants' brief responding to State Plaintiffs' renewed motion is due on September
2 24, 2020, which means that absent an extension Defendants would need to dedicate their time and
3 resources fully to preparing that response. Thus, the Parties request a 28-day extension of
4 Defendants' briefing deadline and a commensurate extension of State Plaintiffs reply date to
5 allow for negotiations. Such negotiations, if successful, would avert the need for further briefing
6 on the renewed fee motion, saving time for the Court and the Parties.

7 As the merits portion of the case has been concluded with the Ninth Circuit's ruling and no
8 other issues remain outstanding, and the hearing on State Plaintiffs' renewed motion has been
9 calendared for November 19, 2020, the extended deadline would have no effect on the schedule
10 of the case.

11 For the foregoing reasons, the State Plaintiffs and Defendants stipulate to and respectfully
12 request that the Court enter an order extending the deadline for the Defendants to file their
13 opposition to the State Plaintiffs' renewed motion and the State Plaintiffs deadline to file their
14 reply by twenty-eight days to October 22 and October 29, 2020, respectively.

1 Dated: September 21, 2020

Respectfully Submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 DAVID A. ZONANA
5 Supervising Deputy Attorney General

6 /s/ Somerset Perry
7 SOMERSET PERRY
8 Deputy Attorney General

9 *Attorneys for the People of the State of
10 California, by and through Attorney
11 General Xavier Becerra and the California
12 Energy Resources Conservation and
13 Development Commission*

14 Dated: September 21, 2020

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28 Dated: September 21, 2020

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ECR Renewed Fees Ext Stip Sept 21 20.docx

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PURSUANT TO STIPULATION, IT IS HEREBY ORDERED that the deadline for Defendants to file their opposition to the State Plaintiffs' renewed motion for attorneys' fees is extended to October 22, 2020, and the State Plaintiffs' deadline to file their reply for the renewed motion for attorneys' fees is extended to October 29, 2020.

Date: September 22, 2020

